

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. Crim. No. 08-00075 (JMR)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	PLEA AGREEMENT AND
)	SENTENCING STIPULATIONS
ZACHARY WILEY MANN,)	
)	
Defendant.)	

The United States of America and Zachary Wiley Mann (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

FACTUAL BASIS

1. The government and the Defendant agree on the following factual basis for the plea:

From in or about January of 2008 through in or about March of 2008, defendant devised a scheme to defraud and used interstate wires in furtherance of that scheme, in violation of 18 U.S.C. § 1343. In particular, defendant utilized the Internet to illegally obtain credit card account information from a number of individuals which he thereafter used without authorization for his own personal financial benefit. Moreover, during and in relation to this

fraudulent scheme, defendant knowingly possessed and used a means of identification of another person, in violation of 18 U.S.C. § 1028A.

Defendant obtained the credit card account information by "hacking" into an Internet-based order processing (shopping cart) server. Defendant then used stolen credit card numbers to add value to gift cards he purchased for small dollar amounts at Wendy's, Burger King, Papa Johns's, and Panera Bread restaurants. After he had used the stolen credit card numbers to fraudulently inflate the value of the gift cards, he then placed advertisements for the gift cards on "Craigslist" and resold them in cash transactions.

For example, on February 11, 2008, purchased 7 Panera stored-value gift cards for \$1.00 each. Minutes after defendant purchased the 7 gift cards, each of the cards were loaded with \$199.00, using three credit cards issued to the following individuals: (1) T[REDACTED] C[REDACTED], [REDACTED] West Kyler Ave., Hayden, ID; (2) M[REDACTED] U[REDACTED], [REDACTED] West Franklin St., Richmond, VA; I[REDACTED] M[REDACTED], [REDACTED] Liberty Street, Salisbury, MD. Defendant loaded the additional \$199.00 onto the stored-value cards by connecting via the Internet to the Panera bread website, www.panerabread.com, and entering the illegally obtained credit card account numbers.

Law enforcement conducted a search of defendant's computers, remote storage media and email accounts, during which they discovered that defendant illegally obtained and possessed credit card account information from thousands of victims. Law enforcement also located during a search of defendant's residence equipment for making and modifying credit cards and stored-value gift cards.

At the time defendant committed these offenses, he was on supervised release in connection a December 2006 conviction for conspiracy to commit computer fraud and aggravated identity theft out of the Southern District of Florida (05-cr-80167 (KLR)).

PLEA AGREEMENT

The defendant and the government agree, pursuant to Rule 11, as follows:

2. Waiver of Indictment. The defendant agrees to waive his right to be charged by indictment, and he agrees to plead guilty to an Information charging him with one count of wire fraud, in violation of 18 U.S.C. § 1343, and one count of aggravated identity theft, in violation of 18 U.S.C. § 1028A.

3. Maximum Potential Penalties. The defendant understands that the maximum statutory penalty for violation of 18 U.S.C. § 1343 is as follows:

- a. a term of imprisonment of up to 20 years;
- b. a criminal fine of up to \$250,000.00;

- c. a term of supervised release of up to 5 years;
and
- d. a special assessment of \$100.00, which is payable to the Clerk of Court prior to sentencing.

The defendant understands that the maximum statutory penalty for violation of 18 U.S.C. § 1028A is as follows:

- a. a statutorily mandated term of imprisonment of 2 years;
- b. a criminal fine of up to \$250,000.00;
- c. a term of supervised release of up to 3 years;
and
- d. a special assessment of \$100.00, which is payable to the Clerk of Court prior to sentencing.

4. Supervised Release. There is no agreement as to the length or conditions of supervised release that the Court will impose in this case. The defendant understands that, if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term.

5. Sentencing Guidelines. The defendant understands that he will be sentenced in accordance with federal sentencing law which includes consideration of the Sentencing Guidelines promulgated pursuant to the Sentencing Reform Act of 1984. The parties recognize that although the Court must give considerable weight to the guidelines, the guidelines are no longer binding but simply advisory.

6. Sentencing Stipulations. The parties have agreed upon the following guideline calculations. These stipulations are binding on the parties but not on the Court. If the Court determines the guideline factors differently, neither party may withdraw from plea agreement. Nothing in this plea agreement should be construed to limit the parties from presenting any and all relevant evidence to the Court at sentencing. The parties stipulate to the following guideline calculations:

- a. Base Offense Level for Wire Fraud. The base offense level for wire fraud under 18 U.S.C. § 1343 is 7. U.S.S.G. § 2B1.1(a)(1).
- b. Specific Offense Characteristics.
 - (1) The parties agree that defendant's offense level should be increased by two (2) levels, because the loss was between \$5,000 and \$10,000. U.S.S.G. § 2B1.1(b)(1).
 - (2) The parties agree that defendant's offense level should be increased by two (2) levels for the possession and use of device-making equipment under U.S.S.G. § 2B1.1(b)(10).
 - (3) The parties agree that defendant's offense level should be increased by six (6) levels because the offense in this case involved more than 250 victims under U.S.S.G. § 2B1.1(b)(2).
 - (4) The government contends that the offense involved sophisticated means under U.S.S.G. § 2B1.1(b)(9)(C), such that defendant's offense level should be increased by two (2) levels. The government will present evidence at sentencing in support of this enhancement. The defendant disagrees that this enhancement applies.

c. Adjustments.

(1) Victim-Related/Role in Offense/Obstruction. Defendant's offense level should be increased by three (3) points because he committed his offense while on supervised release in connection with a prior federal felony conviction under U.S.S.G. § 3C1.3. The parties agree that no other Chapter 3 Adjustments are applicable to defendant's sentence.

(2) Acceptance of Responsibility. In exchange for the Defendant's plea, the United States agrees to recommend that the Defendant receive a three (3) level reduction for acceptance of responsibility, provided the Defendant (i) fully and truthfully admits his involvement in the offense to the probation office and the Court, (ii) pays the \$100 special assessment prior to sentencing, (iii) complies with the conditions of pretrial release, (iv) cooperates fully during the presentence investigation, and (v) complies with the other conditions set forth in this agreement and engages in no conduct inconsistent with acceptance of responsibility. Whether there will be a reduction for acceptance of responsibility shall be determined by the Court in its discretion.

d. Criminal History Category. Based on information available at this time, the parties believe that the Defendant's criminal history category is II or III. U.S.S.G. § 4A1.1.

e. Guideline Range. If the adjusted offense level is 19 (base of 7, plus 2 for a loss of between \$5,000 and \$10,000, plus 2 for device-making equipment, plus 6 for 250-or-more victims, plus 2 for sophisticated means, plus 3 for committing the offense while on federal supervision, minus 3 for acceptance), defendant's guidelines range for the fraud count will be between 33-41 months if he is a criminal history category II and between 37-46 months if he is a criminal history category III.

If the adjusted offense level is 17 (base of 7, plus 2 for a loss of between \$5,000 and \$10,000, plus 2 for device-making equipment, plus 6 for 250-or-more victims, plus 3 for committing the offense while on federal supervision, minus 3 for acceptance), defendant's guidelines range for the fraud count will be between 27-33 months if he is a criminal history category II and between 30-37 months if he is a criminal history category III.

If defendant's criminal history category is IV or greater, the parties agree that defendant should be sentenced within the applicable guidelines range.

- f. Mandatory Sentence for Aggravated Identity Theft. The defendant understands that a violation 18 U.S.C. § 1028A carries a statutorily mandated sentence of no more and no less than 2 years, which sentence is required to be served consecutive to the sentence for the wire fraud. 18 U.S.C. § 1028A(a)(1).

Accordingly, under the stipulations of this Plea Agreement, the defendant understands and acknowledges that he could receive a total sentence of anywhere from 51 months to 65 months if he is a criminal history category II and from 54 months to 70 months if he is a criminal history category III.

If defendant's criminal history category is IV or greater, the parties agree that defendant should be sentenced within the applicable guidelines range, plus the statutorily required sentence for violation of 18 U.S.C. § 1028A.

- g. Supervised Release. The Sentencing Guidelines specify that if a term of imprisonment is ordered, the Court is required to impose a term of supervised release of 2 to 3 years. U.S.S.G. § 5D1.2(a)(2).
- h. Sentencing Arguments. Both the defendant and the United States explicitly waive the right to seek a departure or variance from, or otherwise argue for a sentence outside of, the guidelines range to which they have stipulated in this agreement.

7. Court Decides the Sentence. The parties also agree that the foregoing stipulations, although binding on the parties, do not bind the Court and that the Court has the sole discretion to determine the appropriate sentencing range. The parties understand and agree that if the Court determines that different sentencing factors apply to defendant's offense other than those set forth in this agreement, neither party will be permitted to withdraw from this plea agreement.

8. Fine and Costs. There is no agreement as to whether a fine or costs of imprisonment and/or supervision should be imposed, and the Court may impose the maximum fine or costs as provided by law.

9. Special Assessment. Separate and apart from any restitution ordered to be paid, the defendant agrees to pay to the Clerk of Court the mandatory special assessment of \$100.00 prior to sentencing.

10. Restitution. The defendant understands and agrees that the Mandatory Victim Restitution Act, 18 U.S.C. §3663A, applies and that the Court is required to order the defendant to make restitution to the victim(s) of his crime.

11. Forfeiture. The government reserves its right to proceed against any of the defendant's assets if said assets represent real or personal property involved in violations of the laws of the United States or are proceeds traceable to such property.

12. Waiver of Rights. The Defendant understands and agrees that by pleading guilty, he will waive all rights to a trial on the question of his guilt or innocence and as to all issues that he did or could have raised by pretrial motion. Defendant explicitly acknowledges that his plea to the charged offense authorizes the Court to impose any sentence authorized by law, given the admitted facts and any facts found by the court at the sentencing hearing.

13. Complete Agreement. The foregoing accurately sets forth the full extent of the Plea Agreement and Sentencing Stipulations in the above-captioned case.

FRANK J. MAGILL, JR.
Acting United States Attorney

BY: Timothy C. Rank
Assistant U.S. Attorney

Dated:

Zachary Wiley Mann
Defendant

Dated:

Lyonel Norris
Attorney for Defendant